

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DUANE HALL,

Plaintiff,

v.

FLUOR HANFORD, INC.,

Defendant.

No. CV-08-5029-EFS

**ORDER DENYING AND GRANTING IN
PART DEFENDANT'S MOTION FOR
RECONSIDERATION**

Before the Court, without oral argument,¹ is Defendant Fluor Hanford, Inc.'s Motion for Reconsideration of 9-29-08 Order Granting Plaintiff's Motion to Amend. (Ct. Rec. 38.) After reviewing Defendant's motion for reconsideration, the Court denies and grants in part the motion.

The September 29, 2008 Order (Ct. Rec. 31) ruled on two motions; it denied Defendant's Rule 12(b)(6) Motion to Dismiss (Ct. Rec. 9) and

¹ It is the Court's standard policy to abide by Western District of Washington Local Rule 7(h) and not allow a response to a motion for reconsideration. This policy is set forth in the Court's scheduling order. A scheduling order has not yet been entered in this case given Defendant's dismissal motion.

1 granted Plaintiff Duane Hall's Motion to Amend Complaint (Ct. Rec. 21).
2 The Court denies Defendant's reconsideration request in relation to the
3 motion to dismiss. Before Plaintiff filed his Motion to Amend
4 Complaint, the Court was prepared to deny Defendant's fully-briefed
5 motion to dismiss. While the Court was preparing this order, Plaintiff
6 filed his motion to amend. Because the motion to amend, which was
7 accompanied by a proposed third amended complaint, sought to remedy the
8 claimed deficiency, the Court ruled on the motion to amend. The Court
9 now recognizes this was premature.

10 To remedy this procedural oversight, the Court vacates the
11 September 29, 2008 Order in part - the Court vacates its order granting
12 Plaintiff permission to file an amended complaint. Defendant's
13 reconsideration memorandum sets forth Defendant's substantive arguments
14 opposing Plaintiff's motion to amend; the Court, therefore, construes
15 Defendant's reconsideration memorandum (Ct. Rec. 39) as a response to
16 Plaintiff's motion to amend. Plaintiff's reply is due within five (5)
17 days, excluding weekends and holidays, after service of this Order. The
18 Court will consider Plaintiff's motion to amend without oral argument on
19 October 22, 2008.

20 For the above-given reasons, **IT IS HEREBY ORDERED:**

21 1. Defendant's Motion for Reconsideration of 9-29-09 Order
22 Granting Plaintiff's Motion to Amend (Ct. Rec. 38) is **GRANTED** (motion to
23 amend) **and DENIED** (motion to dismiss) **IN PART**.

24 2. The Court vacates its September 29, 2008 Order (Ct. Rec. 31)
25 as it pertains to Plaintiff's Motion to Amend Complaint. Plaintiff's
26 Motion to Amend Complaint (Ct. Rec. 21) will be heard without oral

1 argument on **October 22, 2008**.

2 3. Also, for the reasons given on the record at the October 7,
3 2008 hearing, Defendant's Motion to Strike Plaintiff Counsel's September
4 22, 2008 Letter to Judge Shea (**Ct. Rec. 27**) is **DENIED**.

5 **IT IS SO ORDERED.** The District Court Executive is hereby directed
6 to enter this Order and furnish copies to counsel.

7 **DATED** this 10th day of October 2008.

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10 _____ s/ Edward F. Shea
11 EDWARD F. SHEA
UNITED STATES DISTRICT JUDGE

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